STATE OF CALIFORNIA

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November 24, 1992

No. 92/75

TO COUNTY ASSESSORS:

SUPPLEMENTAL ASSESSMENT LITIGATION

County of Los Angeles v. Assessment Appeals Board No. 1
(Daniel Bunn, No. B059175)

The second Appellate District Court of Appeal recently granted to a taxpayer in Los Angeles County relief from supplemental assessment on the grounds that the assessment was not made timely by the assessor. The subject real property underwent a change in ownership November 27, 1985, and the assessor notified the taxpayer of a supplemental assessment on November 11, 1989.

The court ruled that the four-year limitations period for enrolling escape assessments under Revenue and Taxation Code Section 532 also applied to the supplemental assessment in this case. Since the supplemental assessment was for a portion of the 1985-86 assessment year, the court ruled that the deadline for making the assessment was July 1, 1989.

The decision is, of course, contrary to Board staff's consistently held position that there is no statutory time limit for making supplemental assessments (see Letter to Assessors 88/75, dated November 4, 1988). However, at the direction of the court, the decision will not be published in official reports; accordingly, the decision does not establish a new rule of law, and it may not be cited as precedent in any other case. A copy of the decision is enclosed for informational purposes.

As you are aware, urgency legislation effective September 14, 1992 (Chapter 663, Statutes of 1992) provides the previously lacking statutory time limit for supplemental assessments. A separate letter dealing with the effects of this legislation is being prepared.

If you have any questions regarding supplemental assessments, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

Verne Walton

Verne Walton, Chief
Assessment Standards Division

VW:sk
Enclosure

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. ASSESSMENT APPEALS BOARD NO. 1 OF THE COUNTY OF LOS ANGELES, Defendant and Respondent.	NO. B059175 (Super.Ct.No. BC017796)
DANIEL BUNN, Real Party in Interest and Appellant.	

COURT OF APPEAL - SECOND D.C.
FILED
MAY 05 1992
JOSEPH A. LANE Clerk
Deputy Clerk

On November 27, 1985 appellant Daniel Bunn (Bunn) purchased a parcel of improved commercial property in North Hollywood and recorded a deed reflecting the transaction.

This change of ownership gave respondent Los Angeles County Assessor (County) the right to redetermine the base year value of the realty and levy a pro rata supplemental tax assessment for the 1985-1986 based on the difference between the prior valuation and the newly determined based year value. (See, e.g., Shafer v. State Bd. of Equalization (1985) 174 Cal.App.3d 423, 426-528 and statutes cited therein [review den.].) However, for reasons which have never been explained, the assessor failed to do so. Nonetheless, Bunn did pay the tax bills which he received for the property.

On November 11, 1989, County sent Bunn a document entitled "Notice of Assessed Value Change." It recited: "This change due to a change of ownership occurring Nov. 27, 1985." It stated that the realty's prior assessed value was $750,892 and that its new assessed value would be $2,900,000 and that the reassessment related to the "supplemental assessment roll." This would result in a pro rata supplemental assessment for the 1985-1986 tax year of approximately $15,000. The document offered the taxpayer no explanation as to why County waited until November 1989 to send this reassessment.

Bunn paid the supplemental assessment but on December 1, 1989, filed an "Application for Reduction of Assessment"

with the County of Los Angeles Assessment Appeals Board (Appeals Board). The clerk of the Appeals Board stamped the application "SB 813" which indicated that Bunn was contesting a supplemental assessment triggered by a change in ownership of the property. (See, e.g., Shafer v. State Bd. of Equalization, supra, 174 Cal.App.3d 423.) Bunn gave two grounds for his request: (1) "Assessor's value exceeds market value on date of purchase. Date of purchase 11-27-85" because his (Bunn's) opinion of the "market value" was $2,100,000; and (2) "Assessor exceeded four-year statute of limitations in making assessment".

On October 17, 1990, the cause was heard before the Appeals Board. At the beginning of the hearing,[1/] Bunn disavowed any claim that the Assessor had improperly valued the realty and stated the only issue was whether the assessment was legally imposed. He conceded that pursuant to Proposition 13, the triggering event for the reappraisal and supplemental assessment was his 1985 purchase of the property but averred that County had only four years in which to carry out that task. However, he advanced inconsistent positions as to the legal effect of his claim. That is, at one point, he urged that if the Assessor failed to send the supplemental assessment within four years of the change in ownership, the Assessor would be barred forever from reassessing the property based

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1. Bunn was represented by counsel at the hearing.

upon his purchase thereof. However, later in the hearing, he stated that the Assessor was not precluded from using the 1985 purchase price to set the base year value but was merely barred from going back more than four years to collect taxes based upon that amount.

County, on the other hand, argued that none of the various statutes of limitations found in the Revenue and Taxation Code and relied upon by Bunn were expressly applicable to a supplemental assessment occasioned by a change in ownership.

The Appeals Board ruled in Bunn's favor. It found that the supplemental assessment was barred by the statute of limitations and accordingly reduced it to $0.

County thereafter filed a petition for a writ of mandate in the superior court to overturn the decision of the Appeals Board.[2/] The superior court eventually ruled in County's favor, finding that the tax in question was a supplemental assessment to which the statute of limitations did not apply. This appeal by Bunn followed.

Before we analyze the parties' contentions, we first set forth the development of the pertinent law.

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2. Bunn's contention that the superior court did not even have jurisdiction to entertain County's petition for writ of mandate is without merit. It is well-settled that without resort to this remedy, "the county would have no available

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In June 1978, the voters adopted Proposition 13 which amended the California Constitution by adding article XIII A, the thrust of which was to limit ad valorem property taxes to a maximum of 1 percent of the realty's full value. Full value is defined as the lower of fair market value or the property's base year value. (Cal. Const., art. XIII A, § 2, subd. (b); Rev. and Tax. Code, § 51.)[3/] Base year value is defined as the valuation expressed in the 1975-1976 tax bill unless the property was newly constructed or changed ownership thereafter in which case the fair market value is determined as of the date of purchase or new construction. (Cal. Const., art. XIII A, § 2, subd. (b); §§ 51, 110.1, subd. (f).)

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2. (continued)

procedure to review tax appeal proceedings or to cause assessment appeals boards to conform to the law. [Citations.]" (County of San Diego v. Assessment Appeals Bd. No. 2 (1983) 148 Cal.App.3d 548, 553; fn omitted.)

Contrary to Bunn's claim, section 538 does not establish that County had an adequate remedy at law. The statute merely directs the Assessor to bring an action for declaratory relief if "the assessor believes that a specific provision of the Constitution of the State of California, of [the Revenue and Taxation Code], or of a rule or regulation of the board is unconstitutional or invalid, and as a result thereof concludes that property should be assessed in a manner contrary to such provision . . . ." This statute is clearly inapplicable to the case at bench for County's action attacked the Appeals Board's legal interpretation of the controlling statutes. Hence, the mandamus action was properly filed and entertained.

3. All statutory references are to the Revenue and Taxation Code.

If the 1975-1976 base year value was incorrectly computed, assessors had until June 30, 1980 to correct it by reassessing the property and levying escape assessments to collect the taxes which should have been collected. (§ 110.1, subd. (c).) "An escape assessment merely reflects the amount by which the property has been underassessed and is a mechanism which permits the correction of the effects of the underassessment." (Stats. 1987, ch. 537, § 1.)

"However, until 1988, the Legislature provided no guidelines to assessors for correcting post-1975 base year values which were incorrect due to a change of ownership or new construction. The Board of Equalization advised assessors they could correct post-1975 base year values whenever they discovered a change of ownership or new construction, but that escape assessments flowing from the correction would be limited to the last four years. (Ehrman & Flavin, Taxing California Property (1990 3d ed.) § 14:02, fn. 9, p.14-9.)" (Blackwell Homes v. County of Santa Clara (1991) 226 Cal.App.3d 1009, 1014 [review den.].)

Effective January 1, 1988, legislation was enacted to clarify this area.[4/] If the error or omission is in the determination of the base year value and "does not involve the

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4. The legislation was a reaction to the decision in Dreyer's Grand Ice Cream, Inc. v. County of Alameda (1986) 178 Cal.App.3d 1174 [review den.] which had interpreted some of the then governing statutes.

exercise of an assessor's judgment as to value" (§ 51.5, subd. (a); emphasis added), the error can be corrected whenever it is discovered. The Legislature expressly excluded from the definition of "an error or an omission involving the exercise of an assessor's judgment" those that result from either taxpayer fraud or from clerical errors. (§ 51.5, subd. (c).) Clerical errors are defined as "only those defects of a mechanical, mathematical, or clerical nature, not involving judgment as to value, where it can be shown from papers in the assessor's office or other evidence that the defect resulted in a base year value that was not intended by the assessor at the time it was determined." (§ 51.5, subd. (f)(2).)

If, on the other hand, the error did involve the exercise of the assessor's judgment as to value, the assessor only has four years "after July 1 of the assessment year for which the base year value was first established" (§ 51.5, subd. (b)), to correct the error.

In either event, if a timely correction of the base year value increases the amount of taxes owed, section 51.5, subd. (d) mandates that "appropriate escape assessments shall be imposed in accordance with this division." Section 51.5 falls within Division 1, "Property Taxation," of the Revenue and Taxation Code. Division 1 also includes Section 532 which sets forth the limitations period for escape assessments. The Legislature amended Section 532 at the same time it enacted

section 51.5 and specifically declared that the amendment was "necessary to make clear that an escape assessment resulting from the correction of an error in a base-year value may be made" within the limitations period(s) provided therein. (Stats. 1987, ch. 537, § 1.) Section 532 states, in pertinent part, that any assessment "shall be made within four years after July 1 of the assessment year in which the property escaped taxation or was underassessed." We believe these statutes embrace this case. It is undisputed that the assessor failed to revalue the property upon its sale to Bunn and thus redetermine the base year value and taxes owed for the 1985-1986 tax year. Upon discovery of that error, the assessor determined a new base year value and levied the supplemental assessment to recoup the additional taxes owing for 1985-1986. We therefore reject County's contention that there is no statutory limitation on its ability to levy the contested assessment.5/

We now turn to the application of the limitations period to the instant case. Bunn bought the property on November 25, 1985, a date within the 1985-1986 tax year. This

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5. County's reliance upon section 75.13 is unpersuasive. The statute merely provides that "any supplemental assessment shall not be deemed to be an escaped assessment" for purposes of permitting installment payments. Implicit in this singular exemption of supplemental assessments from the rules governing escape assessments is the legislative determination that all other rules about escape assessments do control.

change of ownership permitted the Assessor to reassess the property (§ 75.10), and, assuming an increase in fair market value, to levy a pro rata supplemental assessment of taxes for the 1985-1986 tax year based on the difference between the prior valuation and the newly determined base year value. (§§ 75.11, subd. (b) and 74.41, subd. (b).) The supplemental assessment becomes a lien on the property "on the date of the change in ownership . . . ." (§75.54, subd. (a).). Hence, the error in failing to send the supplemental assessment relates to the 1985-1986 tax year. The language of section 532 is clear: the assessment must be made "within four years of July 1 of the assessment year in which the property . . . was underassessed." Under the facts of this case, the assessor had until July 1, 1989, four years from July 1, 1985, to levy the escape assessment. However, the assessor did not send the supplemental assessment until November 11, 1989,[6/] a date outside of the limitations period.

To avoid the force of this conclusion, County alternatively urges that the four-year period did not begin to

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6. On this appeal, Bunn expends much energy attacking the superior court's finding that the November 1989 tax bill constituted a supplemental assessment. This disingenuous argument need not detain us. Quite apart from the fact that the record presented to the superior court contains more than ample evidence on that point, Bunn's appeal to the Appeals Board was premised on the claim that the contested bill was a supplemental assessment and even now he has never suggested what the bill was, if not a supplemental assessment.

run until November 25, 1985, the date Bunn purchased the property or July 1, 1986, the year the new base year value would be enrolled on the regular tax year This argument flies in the face of the clear language of the statute. As the Blackwell court observed, "section 532 is completely unambiguous with respect to the day of the year, July 1, upon which the statute of limitations begins to run. We are not free to ignore this language." (Blackwell Homes v. County of Santa Clara, supra, 226 Cal.App.3d at p. 1016.) Nor are we. County is seeking to recoup taxes owed for the 1985-1986 tax year. It cannot, with one breath, assess taxes in a given year, and in the next credibly deny that such year is "the assessment year during which the property escaped taxation or was underasessed."

We recognize that this result means that in this case the assessor had less than four years in which to discover and correct the error. However, the Legislature defined the starting point of the statute of limitations as "July 1 of the assessment year" rather than the date of the event triggering reassessment of the property. We are not free to rewrite the statute.[7/] If County believes the statute does not give it sufficient time, it should seek relief from the Legislature.

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7. Ironically, we find support for this interpretation in evidence County proffered in the trial court. To support its

(Continued to next page)

The judgment is reversed. Appellant to recover costs.

NOT TO BE PUBLISHED.

_____, J.
MANELLA*

We concur:

_____, Acting P.J.
FUKUTO

_____, J.
NOTT

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7. (continued)

argument that there was no statute of limitations on the levying of supplemental assessments, County tendered a written recommendation made in December 1990 by the Assistant Chief Counsel to the State Board of Equalization that section 75.11 be amended to provide for a specific time period for enrolling assessments on the supplemental roll because he believed no limitations period was then in effect. The amendment, which was not enacted, would have given the assessor four years from July 1 of the assessment year in which the change of ownership occurred to levy the supplemental assessment, not four years from the date of the change of ownership. The proposed statute provided, in part, that "no supplemental assessment . . . shall be valid, or have any force or effect, unless it is placed on the supplemental roll . . . within four years after July 1 of the assessment year in which the event giving rise to the supplemental assessment occurred . . . ." (Emphasis added.)

Bunn objected to this evidence, arguing that counsel's opinion was inadmissible hearsay and that the Legislature's failure to enact the statute did not prove there was no statute of limitations because numerous reasons could explain the legislative inaction (see, e.g., Title Insurance and Trust Co. v. County of Riverside (1989) 48 Cal.3d 84, 97). Although the trial court sustained the objections, County, in its brief, has asked this court to take judicial notice of the document.

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* Assigned by the Chairperson of the Judicial Council.